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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN WILLIAM LIEBA, II.,

Defendant.

Case No. CR-16-51-GF-BMM

**MEMORANDUM IN AID OF
SENTENCING**

[SENTENCING DATE: JULY 26, 2017]

COMES NOW, Defendant, John William Lieba, II., by and through his Counsel of record R. Henry Branom Jr., Assistant Federal Defender and the Federal Defenders of Montana, and hereby submits his Memorandum in Aid of Sentencing.

1. Introduction

Mr. Lieba was convicted following a jury trial of Kidnaping of an Individual Under 18 in violation of Title 18 U.S.C. §§ 1153(a), 1201(a) and 3559(f)(2), (Count I), Aggravated Sexual Abuse in violation of Title 18 U.S.C. §§ 1153 (a) and 2241(c), (Count II), Assault Resulting in Serious Bodily Injury in violation of Title 18 U.S.C.

§§ 1153(a) and 113(a)(6), (Count III). Mr. Lieba has objections to the advisory guideline range contained in the Pre-sentence Report (PSR) which are addressed below. Mr. Lieba believes that a sentence of 360 months, which is the statutory mandatory minimum, will comport with 18 U.S.C. § 3553(a).

2. The Sentencing Mandate

As the Court is well versed in the case law governing sentencing the defendant will not address it here. The overarching sentencing mandate of the congressional command is that the Court “shall” impose a sentence that is sufficient “to comply with the purposes set forth” in the Sentencing Reform Act. Those purposes, discussed more fully below, suggest that a sentence of 360 months will comport with 18 U.S.C. § 3553(a).

A. Reflect Seriousness of the Offense, Promote Respect for the Law, and Provide Just Punishment

The offenses of conviction are unquestionably serious. The defense’s requested sentence of 360 months for a 22 year old defendant will properly reflect the seriousness of the offense, promote respect for the law and provide just punishment.

B. Deterrence

A sentence of 360 months along with substance abuse and mental health treatment will serve as a deterrent.

C. Protect the Public from Further Crimes of the Defendant

The public can be protected from further crimes by Mr. Lieba. The most

effective protection for the public will be for Mr. Lieba to address his substance abuse and mental health issues. Sentencing Commission pronouncements on recidivism suggest a direct impact of the age of the offender. Recidivism rates decline relatively consistently as age increases, from 35.5% under age 21, to 9.5% over age 50. See, U.S. Sentencing Commission, MEASURING RECIDIVISM: CRIMINAL HISTORY COMPUTATION OF THE FEDERAL SENTENCING GUIDELINES, at page 12. See http://www.ussc.gov/publicat/Recidivism_General.pdf. Mr. Lieba will be approaching middle age when he is released from a 30 year sentence. The public will be adequately protected by a sentence of 360 months.

D. Provide the Defendant with Needed Educational or Vocational Training, Medical Care, or Other Correctional Treatment in the Most Effective Manner

Mr. Lieba has serious substance abuse and mental health issues that need to be addressed. (See PSR ¶¶ 93-131). These issues need to be addressed in custody and while on supervised release.

3. Objections

Mr. Lieba objects to the enhancement in ¶ 47. This is an element of Kidnaping and is accounted for in that offense. It is also duplicative of the enhancement in ¶ 45. Mr. Lieba objects to the enhancement in ¶ 48. Age is an element of 18 U.S.C. 2241(c), and pursuant to application note 2, to §3A1.1(b)(1) is not to be applied because age is incorporated in the offense guideline. Mr. Lieba objects the enhancement contained in ¶ 50 as it is in clear violation of Mr. Lieba's right against

self incrimination guaranteed by the Fifth Amendment.

4. Conclusion

WHEREFORE, for the foregoing reasons a sentence of 360 months comport with 18 U.S.C. § 3553 for a person with Mr. Lieba's history and characteristics.

RESPECTFULLY SUBMITTED this 24 th day of July, 2017.

/s/ R. Henry Branom Jr.

CERTIFICATE OF SERVICE
L.R. 5.2(b)

I hereby certify that on July 24, 2017, a copy of the foregoing document was served on the following persons by the following means:

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/s/ R. Henry Branom Jr.